IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21037 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AGRO INDUSTRIES CORPO-RATION LIMITED - Petitioner(s)
Versus
PRAVINSINH BABUBHAI CHAUHAN - Respondent(s)

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Appearance :

MR HJ NANAVATI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MS HINA DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 28/11/2007

ORAL JUDGMENT

1. Heard learned Advocate Mr. HJ Nanavati for

petitioner Management and Ms. Hina Desai, learned Advocate for the respondent workman.

2. Through this petition under Article 227 of the Constitution of India, petitioner has challenged the award made by the labour court, Ahmedabad in Reference NO. 357 of 1994 dated 9th December, 2005 published on 31st January, 2006 wherein the labour court has granted reinstatement in service with continuity of service with full back wages for interim period with consequential benefits and costs of Rs. 500.00.

3. Learned Advocate Mr. HJ Nanavati for the petitioner submitted that the labour court has committed gross error in allowing the reference made at the instance of the respondent workman. As per his submission, the services of the respondent workman were not terminated by the petitioner but as per the appointment, his services were coming to an end automatically on 30th September, 1993. He submitted that as the period of appointment was coming to an end automatically, respondent workman has not reported for work. He submitted that the

provisions of section 25F of the ID Act, 1947 are not applicable as the respondent was being given the periodical appointment orders and on each occasion, his services were coming to an end automatically and new order of appointment was being given to the respondent by the petitioner. On 23rd September, 1993, one Mr. BB Patel was reinstated and, therefore, appointment of the petitioner was not extended by the petitioner and, therefore, such termination is not covered by the definition of 'retrenchment' and, therefore, section 25-F of the ID Act, 1947 is not applicable. He also submitted that by way of an abundant caution, on 15th July, 1994, services of the respondent were extended by the petitioner upto 20th July, 1994 and payment was made of Rs.29010.00 by way of Demand Draft drawn on Punjab National Bank which was accepted by the respondent workman on 3rd August, 1994 without prejudice to his rights and contentions. He has produced on record office order dated 27.11.1991, 30.3.92, 30.6.92, 29.9.92, 4.1.93, 3.4.93 and 15th July, 1994 and calculation of

total amount of Rs. 29010.00 considering the salary from 1st October, 1993 to July 20, 1994 as well as leave salary, one month salary and bonus for the year 1992-93. Copy of the said documents have been supplied to learned Advocate Ms. Hina Desai by learned Advocate Mr. Nanavati and, therefore, same have been taken into consideration by this court. Learned Advocate Mr. Nanavati relied upon the following three decisions of the apex Court:

(1) Punjab State Electricity Board and another versus Sudesh Kumar Puri, reported in (2007) 2 SCC 428.

(2) State of Rajasthan versus Sarjeet Singh and another reported in (2006) 8 SCC 508.

(3) Municipal Council, Samrala versus Sukhvinder Kaur reported in (2006) 6 SCC 516.

4. I have considered the submissions as well as the aforesaid three decisions referred to and relied upon by learned Advocate Mr. HJ Nanavati before this court.

5. In all the three decisions relied upon by learned Advocate Mr. HJ Nanavati before this

Court, the apex court has considered the applicability of section 2(oo) (bb) of the ID Act, 1947. As per the said decisions of the apex court, if any workman has been appointed on contractual and temporary basis with condition that his services could be terminated without notice and while accepting such terms and conditions incorporated in the order of appointment without any demur, in such cases, provisions of section 2(oo) (bb) of the ID Act, 1947 are applicable. It has also been considered by the apex court that when the appointment on fixed term basis is followed by further fixed term appointment on the same basis, then, section 2(oo) (bb) of the ID Act, 1947 is attracted. In Punjab State Electricity Board and another (supra), that what does not amount to retrenchment was considered by the apex court. The engagement of Meter Reader by State Electricity Board was on contractual basis. Engagement was conditional and for a specified period. Payment was being made per meter reading at a fixed rate. No regular employment was ever

offered to him. Engagement was dispensed with by the management without following section 25F of the ID Act,1947 on appointment of regular Meter Readers and in light of such facts, it was held by the apex court that the same is covered by section 2(oo) (bb) of the ID Act, 1947. Except the submissions recorded hereinabove and the decisions referred to above, no other contention was raised by learned Advocate Mr.HJ Nanavati before this Court and no other decision was cited by him before this Court.

6. On the other hand, learned Advocate Ms. Hina Desai appearing for the workman submitted that the contention about the applicability of section 2(oo) (bb) of the ID Act, 1947 was not raised by the petitioner before the labour court and, therefore, now, petitioner cannot be permitted to raise the same before this Court for the first time. She also submits that in between the periodical orders of appointment and the termination, looking to the record produced by the learned Advocate Mr. HJ Nanavati for the petitioner, there is not a single day's break in

between and so, as per her submission, respondent was in continuous service without any break of even a day from the date of joining the services till the date of termination and was, thus, satisfying all the requirements of section 25-B of the ID Act, 1947. She also submits that according to the petitioner, if the services of respondent is coming to an end on 30.9.1993, then, where is the question of paying salary to the respondent workman with effect from 1st October, 1993 to 20th July, 1994? Petitioner has not produced on record the appointment order in favour of respondent workman with effect from 1st October, 1993 to 20th July, 1994. She therefore submits that the petitioner is having contradictory stand and defence from the very beginning before the labour court and in view of that, labour court was right in considering the same and was also right in coming to the conclusion that the termination is amounting to retrenchment and section 25F of the ID Act, 1947 has been violated by the petitioner and, therefore, based upon such findings, the labour

court has granted normal and natural relief of reinstatement in favour of the respondent workman and in doing so, labour court has not committed any error warranting interference of this court in exercise of the powers under Article 227 of the Constitution of India.

7. I have considered the submissions made by the learned Advocates for both the parties. I have also perused the award made by the labour Court, Ahmedabad. I have also considered the decision of the apex court referred to and relied upon by learned Advocate Mr. Nanavati before this court. Services of the respondent were terminated on 1st October, 1993 as per the record produced by learned Advocate Mr. HJ Nanavati and, therefore, immediately, complaint was filed by the workman under sec. 2A of the ID Act, 1947 and then, dispute was referred to for adjudication to the labour court by the Assistant Commissioner of Labour on 21.1.1994 and complaint was filed by petitioner before the Assistant Commissioner of Labour on 8th November, 1993.

8. Before the labour court, statement of claim was

filed by the workman at Exh. 4 and written statement thereto was filed by the petitioner vide Exh. 5. Vide Exh. 13, workman was examined and pay slip from December, 1991 to August, 1994 were produced vide Exh. 14 to 34. Vide Exh. 37, Manager of the first party establishment Shri Anilkumar Shyamsundar was examined before the labour court and appointment orders from 1st December, 1991 to 31st March, 1993 have been produced. Thereafter, extension letters were produced upto 30th September, 1993 vide Exh. 38 to 42. Exh. 48 is the letter of appointment of Mr. BB Patel as Site Engineer at Bavla which is dated 22nd September, 1993 and then, Exh. 49 which is relevant dated 15th July, 1994 again appointing respondent workman with effect from 1st October, 1993 to 22nd July, 1994 and payment was made of Rs.29010/- to the respondent workman and letter dated 26th July, 1994 vide Exh. 50 was produced by the petitioner. Labour Court has considered that the petitioner establishment is covered by the definition of industry as defined under section 2(j) of the ID Act, 1947 and

respondent is a workman within the meaning of section 2(s) thereof. On the basis of the record produced by the parties before the labour court, it came to the conclusion that the respondent was in continuous service for a period of 22 months and completed more than 240 days continuous service within the meaning of section 25-B of the ID Act, 1947. Labour Court has considered that the stand taken by the petitioner before the labour court was contradictory and there was no uniformity in the stand taken by the petitioner. On one hand, petitioner was taking stand that the services of the respondent were terminated on 30.9.1993 which is not found to be correct as per the record produced by the petitioner. It was also the stand taken by the petitioner before the labour court that the respondent himself stopped to come for work with effect from 1st October, 1993. If that was so, then, there was no question of filing complaint on 8th November, 1993. Further, if that is so, then, in the proceedings arising from the complaint, the

petitioner would have come forward with such stand that the respondent has abandoned the job from 1st October, 1993 and is not coming to do the work though petitioner is ready to give work to the respondent but that is not the case of the petitioner. After appreciating the record produced before it, labour court was having impression that the petitioner is making an efforts to see that the respondent is disentitled to seek the protection of section 25F of ID Act, 1947 and thereby petitioner gets rid to comply with the mandate of section 25F of the ID Act, 1947. Labour court has considered two letters dated 15.7.1994 and 26.7.1994 which would suggest the extension of service of the respondent with effect from 1st October, 1993 to 20th July, 1994 which is not satisfying the rational/reasons by the petitioner. Labour Court has considered that appointment must have to be given in advance but after completion of the period, subsequently letters of extension have been given to the respondent workman just to save the case of the petitioner from violation

of section 25F of the ID Act, 1947. Labour Court has observed one important aspect that the complaint dated 8th November, 1993 was filed by the respondent before the Asstt. Labour Commissioner and the matter was referred to for adjudication on 11th February, 1994 and, thereafter, notice was issued by the labour court to the petitioner on 13.4.1994 and after receiving notice from the labour court, petitioner decided to extend service period by way of subsequent letter dated 15th July, 1994 upto 20th July, 1994 and so, according to the labour court, Exh. 49 and 50, letters dated 15th July, 1994 and 20th July, 1994 were sent by the petitioner to the respondent after receipt of notice from the labour court on 13.4.94. Thereafter, on 19.10.1994, Exh. 5 reply was filed by the petitioner, therefore, according to the labour court, the mistake which was committed by the petitioner earlier was sought to be rectified by the petitioner by issuing subsequent orders Exh. 49 and 50 and, therefore, based upon such finding, labour court came to

the conclusion that the workman has remained in continuous service of more than 240 days in a year and, therefore, compliance of section 25F of the ID Act, 1947 is must for terminating service of the workman which was not done by the petitioner and, therefore, termination is bad in law for want of such compliance of section 25F of the ID Act, 1947. Looking to the last salary of the workman of Rs.1900/- and considering the oral evidence of the respondent workman wherein it was deposed by the workman that he remained unemployed inspite of his efforts to secure job in any establishment, and also considering the fact that no evidence contrary thereto was produced by the petitioner before the labour court to prove gainful employment of the workman during the interim period, labour court granted full back wages for interim period considering termination as bad and also considering the efforts made by the petitioner to save the termination order issued against the respondent workman.

9. Findings given by the labour court are based on

legal evidence and labour court has given cogent reasons in support of its conclusions. Looking to the appointment order, why such type of appointment orders were issued periodically and on temporary basis, for that, there is no justification coming forward from the side of the petitioner. If the requirement is continuing from the date of appointment till the date of termination, then, why management is issuing such orders on periodical basis, on temporary basis. Reason is apparent that this is done only with a view to get rid of the mandatory provisions of section 25F of the ID Act, 1947 and to deprive the workman from claiming protection of the said mandatory provisions. Such type of efforts on the part of the petitioner are arbitrary and same amounts to unfair labour practice adopted by the petitioner. Looking to all the orders of appointment periodically given to the petitoner from time to time on temporary basis, there is no reason or justification given by the petitioner for issuance of such orders. Last

order is dated 15th July, 1994. Why service period was extended and for that, no appointment order has been issued which suggests periodical or temporary. Looking to the last order dated 15th July, 1994, services of the respondent workman came to an end on 20th July, 1994. For that, periodical order was not given to the respondent by the petitioner. This being an undisputed position, upto 30th September, 1993, periodical appointment orders were there but beyond that from 1st October, 1993 to 20th July, 1994, no such periodical appointment orders have been given by the petitioner to the respondent and, therefore, considering the entire period of services including the order dated 15.7.1994, services of the respondent workman were terminated by the petitioner without complying with the provisions of section 25F of the ID Act, 1947. In light of this situation, whether the provisions of section 2(oo) (bb) of the ID Act, 1947 would be applicable or not. Considering the submission of Ms. Desai that such contention was not raised by petitioner

before the labour court which is not disputed by learned Advocate Mr. Nanavati for petitioner, therefore, since the labour court was not given an opportunity to examine this contention and to give finding thereon, this court cannot permit the petitioner to raise such contention for the first time before this court as it is a mixed question of law and facts required to be pleaded and proved by the petitioner before the labour court. However, without entering into that aspect, this court has examined the contention. Looking to the facts of this case as emerging from the record, section 2(oo) (bb) of the ID Act, 1947 would not be applicable in this case because there is no fixed term order of appointment issued by the petitioner in favour of the respondent. There is some purpose behind bringing this provisions in the Statute with effect from 18.8.1984. In **Executive Engineer, District Panchayat, Bharuch versus Shankarbhai Jivabhai Patel reported in 2006 Lab IC page 2180**, this aspect has been considered by this court in detail. Relevant observations made by

the **Madras High Court in case of Manager (P&A) Oil and Natural Gas Corporation Ltd. Chennai v. G. Radhakrishnan (200) Lab IC 2570** have also been considered by this court in the said decision by referring to para 22 of the said decision. Scope of sec.2(oo) (bb) has been considered and it has also been considered how the employer is abusing such provision unscrupulously while employing the workman and in such circumstances, court should see the real position so as to rule out the injustice to workman. Decision of the Division Bench of Madras High Court has been considered by this court in the above referred decision of this court in case of Executive Engineer, District Panchayat, Bharuch versus Shankarbhai Jivabhai Patel reported in 2006 Lab IC page 2180. Therefore, relevant observations made by this court in case of Executive Engineer, District Panchayat,Bharuch (supra) in para 8,9,10,and 11 are reproduced as under:

> “8. Relying upon the decision of Apex Court in General Manager, Haryana Roadways (supra) it is submitted that in case termination is found to be bad or illegal,

workman is not entitled automatically for full backwages or any wages, but before granting wages, certain relevant factors are to be taken into account by the Labour Court about the length of service, age, family circumstances and condition of establishment. He submitted that as per the decisions of Apex Court, periodical appointments are outside the scope of Section 2(oo) of the Act, means, it is not retrenchment. However, the facts in each case are different in comparison to the facts of the present case. Recently, the Division Bench of Madras High Court in *The Manager (P&A), Oil and Natural Gas Corporation Ltd., Chennai v. G.Radhakrishnan* (2005 Lab.I.C. 2570) has considered the scope of Section 2(oo)(bb) and also considered that how unscrupulous employer abuse such provision while employing the workmen, and that in such circumstances, the court should see the real position so as to rule out injustice to the workmen. The Division Bench of Madras High Court in above decision considered certain decisions of Apex Court and various High Courts and thereafter held in paragraph-22 that:

> *"22. The above referred to decisions on interpretation of Section 2(oo)(bb) explain the legal position to the effect that a claim of an employer on a term based employee providing for automatic termination whether within the terms fixed or on expiry of the said term, cannot be taken for granted to sustain the order of termination. On a plain reading of Section 2(oo)(bb), it is quite clear that such term based employment would fall outside the scope of `retrenchment' so long as the requirement of such fixed period of employment was bona fide required by the employer. It was therefore, repeatedly pointed*

out that such excepted categories required a rigorous test rather than accepting the plea of employer on its face value or otherwise it would cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell. In other words even though the requirement of employment was perennial by adopting the methodology of employing a person for a specific period as many a times, an unscrupulous employer can always resort to abusing the provision contained in Section 2(oo)(bb) to thwart the other statutory protection available to an employee under Section 2(oo), namely, in the case of a `retrenchment' vis-a-vis the consequential benefits contained under Section 25-F of the Industrial Disputes Act. Therefore, when such extraordinary circumstances are brought out in the matter of employment and termination is resorted to by taking umbrage under Section 2(oo)(bb) of the Industrial Disputes Act, in the interest of justice, we are of the view that a close scrutiny of the real position will have to be necessarily made to rule out the possibility of any injustice being caused to an employee. It cannot be lost sight of that Section 2(oo)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment. The benefit of the said

exception will have to be strictly restricted to such specific situations alone and the same cannot be allowed to be misused or abused by the employers even in regard to cases where the nature and requirement of employment is perennial."

See :

(1) S.M.Nilajkar v. Telecom District Manager, Karnataka, 2003 Lab IC 2273 : AIR 2003 SC 3553 : 2003 AIR SCW 2196 : 2003 AIR Kant HCR 1193.

(2) Dpty. Director of Health Services, Nashik v. Latabai Rajdhar Paturkar, 1996 Lab IC 428 : (1996)3 Lab LN 675 (Bom)

(3) Madhya Pradesh Bank Karmachari Sangh (MP) v. Syndicate Bank 1996 Lab IC 1161 (MP)

(4) Alexander Yesudas Maikel v. Perfect Oil Seals and IRP, 1995(1) Lab LN 1165 : 1995 Lab LR 777 (Bom)

(5) M.Venugopal v. LIC of India, AP AIR 1994 SC 1343 : 1994 AIR SCW 778 : 1994(1) Lab LJ 597

(6) Chairman-cum-Managing Director, Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, 1994 Lab IC (NOC) 387 : 1994(2) Lab LJ 1127 (Orissa)

(7) Chakradhar Tripathy v. State of Orissa 1992 Lab IC 1813 (Orissa)

(8) Shailendra Nath Shukla v. Vice-Chancellar, Allahabad University, 1987 Lab IC 1607.

9. Termination of service of casual workmen on daily wages will not fall within the exception contained in sub-clause (bb) of S.2(oo) of the Act, because the "contract of employment" is referable to the contract other than engagement of casual workers on daily wages. `Non-renewal of the contract of employment' presupposes an existing contract of

employment which is not renewed. Even in respect of a daily-wager a contract of employment may exist, such contract being from day to day. The position however, would be different when such a contract is in reality camouflage for a more sustaining nature of arrangement, but the mode of daily-wager is adopted so as to avoid the rigors of the Act. This clause does not contemplate to cover a contract such as of a daily-wager and is rather intended to cover more general class of contracts where a regular contract of employment is entered into and the termination of the service is because of non-renewal of the contract. This interpretation of sub-clause (bb) is in consonance with the substantive provision of clause (oo) of S.2 defining `retrenchment' as termination of service of a workman for any reason whatsoever (See: Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.). Likewise termination of service of a `badli' workman in terms of the contract of employment will not be retrenchment in view of this provision. (Shankariah v. K.S.R.T.C., [1986] I LLJ 195 (196) (Kant.), per Rama Jois, J.)

10. In S. Gobindaraju v. K.S.R.T.C. ([1986] II LLJ 351 (SC), per K.N.Singh, J. the case was decided on another short point viz., the workman was entitled to succeed as the termination order was violative of the principles of natural justice, the Supreme Court did not consider it necessary to decide the point that if the termination of service of a workman by non-renewal of the term of contract of employment or under a stipulation contained in the contract of employment in that behalf will not amount to `retrenchment' in view of the

provisions of sub-clause 2(bb), it would enable unscrupulous employers always to provide a fixed term or stipulation in the contract of service for terminating the employment of employees to escape the rigor of S.25F or S.25N of the Act. And it would further confer arbitrary powers on the employer which would be destructive of the protection guaranteed by the Act to the employees. But various High Courts, using interpretative techniques have mellowed down the rigor of the bare reading of the statute. In Shailendra Nath Shukla v. Vice Chancellor, Allahabad University ([1987] Lab.I.C. 1607 (All.) (D.B.), per Sahai, J.; Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.; Jaybharat Printers & Publishers Pvt. Ltd. v. Labour Court Kozhikode, [1994] II LLJ 373 (Ker.), per Shamsuddin, J.; Bhikku Ram v. Presiding Officer Industrial Tribunal-cum-Labour Court, Rohtak, [1995] Lab.I.C. 2448 (2458-60) (Punj. & Har.) (D.B.), per Singhvi, J. In the facts and circumstances of the case, the termination was held not to be bona fide.; Nathu Ram Saini v. Hindustan Copper Ltd., [1995] I LLJ 421 (424) (Raj.), per Singhvi J.; Ramkishan v. Samrat Ashok Technical Institute, Vidisha, [1995] I LLJ 944 (999) (M.P.), per Dwivedi, J.; Alexander Yesudas Maikel v. Perfect Oil Seals and I.R.P., [1996] I LLJ 533 (535-36) (Bom.), per Srikrishna, J.; Vadodara Municipal Corporation v. Gajendra R.Dhumal, [1996] I LLJ 206 (208-9) (Guj.), per Balia, J.), a Division Bench of the Allahabad High Court observed that sub-clause (bb) is in the nature of an exception to S.2(oo) and has to be construed strictly and in favour of the workmen, as the entire object of the Act is to secure a just and fair deal to them, while adjudicating the termination of

service of a workman for non-renewal of the contract of employment on expiry of the time stipulated in the contract of employment. The nature of employment must be judged by the nature of duties performed by the workman and not on the basis of the letter issued by the employer. S.2(oo)(bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the workmen, as it would be `unfair labour practice'. If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual agreement is given to take it out from S.2(oo), then such agreement cannot be regarded as fair or bona fide. In this case, since the workmen had been working for nearly five years continuously and their jobs were not seasonal, casual or of a daily worker and their duties were like that of a regular employee, the termination of their services on expiry of the stipulated period in the agreement or non-renewal of contract of employment did not come under sub-clause 2(oo)(bb) and amounted to `retrenchment'. A similar view has been taken by a single Judge of a Bombay High Court in Dilip Hanumantrao Shirke v. Zilla Parishad, Yavatmal ([1990] Lab.I.C. 100 (103) (Bom.), per Patel, J., holding that the mere fact that the contract of employment provided termination of by efflux of time, would not by itself be sufficient to take such terminations out of the scope of the definition of `retrenchment'. The adjudicator has to address himself to the question as to whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of

`retrenchment'. Likewise, a single Judge of the Punjab & Haryana High Court in Balbir Singh v. Kurukshetra Central Co-op. Bank Ltd. ([1990] LLJ 443 (445) (Punj. & Har.), per Amarjeet Chaudhary, J. See also: Chairman-cum-managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gauda, [1994] II LLJ 1127 (1128-29) (Ori.) (D.B.), per Rath, J.) has pointed out that this clause being in the nature of an exception cannot be given meaning which will nullify or curtail the ambit of the principle clause, because it is not intended to be an outlet to unscrupulous employers to shunt out workmen in the garb of non-renewal of the contract even if the work subsists. The clause, therefore, has to be construed strictly in favour of the workman as far as possible. This provision cannot be resorted to, to frustrate the claim of the employee against uncalled for retrenchment or for denying other benefits. In other words, it is not to be so interpreted as to enable an employer to resort to the policy of `hire and fire' and give unguided power to him to renew or not to renew the contract irrespective of the circumstances in which it was entered into or the nature and extent of work for which he was employed. It has to be interpreted to limit it to the case where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as mala fide.

11. In Madhya Pradesh Bank Karamchari Sangh v. Syndicate Bank [(1996) Lab. I.C. 1161 (1165-66) (M.P.), Per Doabia, J.] on a review of the law laid down by the Supreme Court and by various High Courts, a single Judge of the Madhya Pradesh High Court has stated the following principles of interpretation and application of the

provisions of this clause --

"(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workmen;

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb);

(iii) that the provisions of S.2(oo)(bb) are not to be interpreted in the manner which may stifle the main provision;

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

In Alexander *Yesudas Maikel v. Perfect Oil Seals and IRP & Ors.* [1996(1) LLJ 533], the Bombay High Court held in paragraph-5 that:

> *".....In any event, one cannot lose sight of the fact that clause (bb) has itself been restrictively interpreted and the judicial consensus appears to be that, if the post cannot be said to operate as a charter for unscrupulous employers to jettison their workmen. (See in this connection Dilip Hanumantrao Shirke & Ors. v. Zilla Parishad, Yavatmal & Ors. (1990-I-LLJ-445) (Bom), State Bank of India v. N.Sundaramoney (1976-I-LLJ-478) (SC), S.S.Sambre v. Chief Reg. Manager Central Bank of India, Nagpur & Anr. (1992-I-LLJ-684 Bom), and K.Rajendran v. Dir.(Per.)*

Project & Equipment Corporation of India Ltd. New Delhi & Anr. 1992 I CLR 462." [See : State of Gujarat and Kiritbhai Somabhai Bariya reported in 2006-II-LLJ pg. 1079].

10. Recently, Madras High Court has also considered section 25B and to interpret beneficiary legislation or welfare legislation in case of **Management, Malaysian Airlines Chennai versus Presiding Officer, Principal Labour Court, Chennai and another (2007) 5 MLJ 1300.** Ratio decidendi as decided by the Madras High Court in the aforesaid decision is as under:

> "I. 'The word 'preceding' has been used in section 25B of the Industrial Disputes Act as incorporated in the year 1964. The concept of 'preceding' was introduced in the Industrial Disputes Act so as to give complete and meaningful benefit of welfare legislation to the working class.
> II. "only because of the action of the Management the workman was terminated without any order and he was stopped from service without being paid compensation either. The conduct of the Management amounted to victimization. "
> III."The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma's case where the Supreme Court observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is

not to make inroads by making etymological excursions."

11.In **Haryana State Electronics Development Corporation Ltd. v. Mamni reported in AIR 2006 SC 2427**, the apex court has considered the provisions of section 2(oo) (bb). Observations made by the apex court in para 7 to 11 are reproduced as under:

> "7. Mr. Ranvir Singh Yadav, learned counsel appearing for the respondent, on the other hand, urged that the respondent having completed 240 days of service within a period of twelve months preceding the date of her termination and in view of the fact that no compensation had been paid as provided in section 25F of the Industrial Disputes Act; the Labour Court and consequently the High Court has rightly directed her reinstatement with full back wages.
> 8. Section 2 (oo) (bb) of the Industrial Disputes Act reads as under:-
> "termination of the service of the workman as a result of the non removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."
> 9. The respondent was appointed from time to time. Her Services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bona fide. The High Court rejected the contention raised on behalf of the appellant herein stating:

> '..... It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged,but was to defeat the rights available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner – management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice. '
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> 10. A finding of fact was arrived at that her services were terminated on regular basis but she was re-appointed after a gap of one or two days. In that view of the matter, the Labour Court or the High Court cannot be said to have committed any illegality.
> 11. In this case the services of the respondent had been terminated on a regular basis and she had been re-appointed after a gap of one or two days. Such a course of action was adopted by the Appellant with a view to def eat the object of the A ct. Section 2(oo) (bb) of the Industrial Disputes Act, 1947, therefore, it is not attracted in the instant case.“

12. In Union of India and others versus Ramchander and Another (2007) 1 SCC (L&S) 439, section 25F of the ID Act, 1947 was considered by the apex court. Observations made by the apex court in

para 4 of said decision are reproduced as under:

> "4. The respondents were appointed against casual labourers but nevertheless they continued in service for four spells and that too their reappointments were made immediately within a few days of termination on completion of 89 days. It shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, they would have completed 240 days of continuous employment. In that view of the matter, the appellants had violated Section 25G of the Industrial Disputes Act. We do not find any error or illegality in the decision rendered by the Division Bench. "

13. Therefore, considering the above referred decision of this court wherein this court has considered various decisions of the apex court as well as other High Courts including the Division Bench of Madras High Court as well as the above referred recent decision of the Madras High Court in case of **Management, Malaysian Airlines Chennai versus Presiding Officer, Principal Labour Court, Chennai and another (2007) 5 MLJ 1300,** and also considering the facts of the case before hand which are not much in dispute between the parties and also considering that the contention of sec. 2(oo)(bb) of the ID Act, 1947 was not raised by the petitioner before the labour court but it has

been raised by the petitioner before this court for the first time, this court cannot entertain such contention as it has been raised before this court for the first time. However, without entering into such technicality, this court has examined the issue in light of the undisputed facts of the case before hand and examined whether sec. 2(oo) (bb) of the ID Act, 1947 would apply to this case or not. According to my opinion, sec. 2(oo) (bb) would apply when employer is able to justify the issuance of periodical appointment on the basis of facts and circumstances which could demand such kind of appointment, otherwise, it would mean that the employer is resorting to such provision only with a view to abuse the provision for getting benefit by creating disadvantageous situation for the workman and also to disentitle him or defeat his rights and protection available under the mandatory provisions of the ID Act, 1947. Therefore, if the employer is unable to justify issuance of such periodical or temporary orders of appointment or the orders of fixed term appointment confined for a particular project, then, same would not attract the provisions of

section 2(oo) (bb) of the ID Act, 1947. Similarly, labour court has also rightly observed having contradictory stand of petitioner from the very beginning and subsequent extension vide Exh. 49 and 50 which is suggesting that there is some ulterior motive or intention to take benefit or chance so that the workman may not be able to get justice from the labour court. I have considered the decisions referred to and relied upon by the learned Advocate Mr. HJ Nanavati. In the said decisions, there was justification for issuance of such kind of periodical orders of appointment on temporary basis or for fixed term and in light of such situation, the apex court has considered that the provisions of section 2(oo) (bb) of the ID Act, 1947 are applicable whereas in this case, the petitioner management has not been able to justify it before this court and not raised such contention before the labour court but raised before this court for the first time. It is necessary to consider one important aspect which is not in dispute that the respondent workman was appointed against the clear vacancy. That can be inferred from Exh.48,

letter dated 22nd September, 1993 in favour of Mr. BB Patel who was appointed as Site Engineer at Bavla Point. Even the written statement also suggests the same avermetns as earlier Mr. BB Patel whose services were terminated while working as supervisor was directed to be reinstated, therefore, Mr.BB Patel was appointed from 23.9.1993 and therefore, services of the respondent were not extended and in view of that also, it is covered by 'retrenchment'. Meaning thereby, the post in which the respondent was working was vacant and clear post and on that post respondent remained in service continuously from 1991 to 1994 and in between, there was not a break of even a day and therefore, same is satisfying the requirement of section 25(B) of the ID Act, 1947. As per the opinion of this court, periodical appointment orders which were issued by petitioner and placed on the record by learned Advocate Mr. HJ Nanavati is nothing but mere paper arrangement made by the petitioner for defeating the rights and claim of the workman available under the ID Act, 1947 and, therefore, according to my opinion, decisions referred to and relied upon by Mr. HJ

Nanavati are not applicable to the facts of the present case. Labour Court has rightly examined the issue and has rightly adjudicated the matter on the basis of the record before it and has rightly granted the reinstatement in favour of the workman.

14. As regards award of back wages granted by the labour court in favour of the workman for the interim period, considering the evidence of the workman that he has remained unemployed during the interim period and also considering that the petitioner has not produced any evidence whatsoever for proving gainful employment of the workman during the interim period. Therefore, labour court granted full back wages in favour of the workman for interim period while making the award of reinstatement. Even before this court also, petitioner has not made any submission on the award of full back wages for interim period made by the labour court. Therefore, labour court has rightly granted full back wages in favour of the workman while making an award of reinstatement and in doing so, no error has been committed by the labour court.

15. In view of the above discussion and observations

made by this court, findings given by the labour court are based on legal evidence. Labour court has given cogent and convincing reasons in support of the conclusions drawn by it. Findings given by the labour court are not perverse or baseless. Learned Advocate Mr. Nanavati has not been able to point out any infirmity in the findings recorded by the labour court. Labour Court has rightly examined the issue and in doing so, labour court has not committed any error warranting interference of this court in exercise of the powers under Article 227 of the Constitution of India. This Court is having very limited jurisdiction under Article 227 of the Constitution and while exercising such jurisdiction,this court cannot act as an appellate authority and even if two views are possible, this court cannot interfere with the same. Therefore, there is no substance in this petition and same is required to be dismissed.

16.In result, this petition is dismissed.

(H.K. Rathod,J.)

Vyas